IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1726 OF 2006

I.G. Petrochemicals Ltd. .. Petitioners

V/s

Union of India & Ors. .. Respondents

Mr.Mohan Jaykar i/b Khaitan & Jaykar for the Petitioners.

Mr.A.S. Rao with Mr.Y.R. Mishra for the Respondents.

CORAM : H.L. GOKHALE & J.P. DEVADHAR, JJ.

DATE : 18TH AUGUST 2006

P.C. :

1. Heard Mr.Jaykar for the Petitioners and Mr.Rao for the Respondents.

2. Rule. Rule is made returnable forthwith.

3. Mr.Jaykar seeks to amend the petition by adding paragraph 15A and prayers (a)(i) as well as prayer (b)(i). Leave to amend. Amendment be carried out within one week from today.

4. The question involved in this petition is in respect of the goods sold in the domestic tariff area by an 100% export oriented unit. The question is as to

whether for the purpose of excise it should be the import value of similar goods or the actual value when sold in the domestic market. The Petitioners are relying upon two orders of the Tribunal dated 20th May 2003 and 21st April 2006. We have our doubts as to whether the first order is in fact in favour of the Petitioners, but the second order, which is the subsequent order, clearly states in para 3 that the price raised in the domestic market cannot be considered as the transaction price in the international market. In any case, what has happened is that after the direction given by the High Court in earlier writ petition, the Assistant Commissioner, Central Excise has passed the order on 30th May 2002 rejecting the request of the Petitioners. An appeal preferred against this order has been dismissed by the Commissioner (Appeals) and a further appeal is pending before the Tribunal.

5. In the meanwhile, the question has now come up for the subsequent period wherein the impugned letters dated 3rd March 2006, 8th March 2006 and 12th April 2006 have been issued whereby the Respondents are insisting to determine the value of the goods cleared for domestic tariff area on the basis of the invoices.

6. We record the statement of Mr.Rao that this second order passed by the Tribunal in the meanwhile on

21st April 2006 is under contemplation of the Respondents for being challenged.

7. Prayer (b) of the petition is to fix the assessable value. In the circumstances, all that we do in the present matter is that we set aside the communications dated 3rd March 2006, 8th March 2006 and 12th April 2006 and direct the respondents to decide the applications made by the Petitioners leading to those communications. The Respondents will decide the pending applications within 8 weeks from today.

8. Rule is made absolute as above. No orders as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR J.)